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INFORMATION FOR AMERICAN CITIZENS ARRESTED IN INDIA

The information in this circular is provided for general information only. While some of this information is about legal issues, it is not legal advice. Questions involving interpretation of specific foreign laws should be addressed to foreign attorneys.

Being arrested in a foreign country can be a frightening experience, particularly because of the uncertainty of how the criminal justice system works. The U.S. Embassy will assign a Consular Officer to monitor your case in order to ensure your health and safety. You should note, however, that you are subject to Indian laws while in India, and that the Embassy cannot represent you or intervene in your case while it is going through the Indian legal system. We encourage you to retain an attorney to represent you. The Embassy cannot recommend a specific attorney. However, we can provide you with a list of local lawyers and their specialties.

Indian Criminal Law. Indian laws and regulations may not afford the protections available to the individual under U.S. law. Penalties for breaking the law can be more severe than in the United States for similar offenses. Persons violating the law, even unknowingly, may be expelled, fined, arrested or imprisoned. Penalties for possession, use, or trafficking in illegal drugs are strict, and convicted offenders can expect jail sentences and fines. If arrested abroad, a citizen must go through the Indian legal process for being charged or indicted, prosecuted, possibly convicted and sentenced, and for any appeals process.

Your Rights. Indian law grants you certain rights during the legal processing of your case. For example, you have the right to be visited by a U.S. Consular Officer after your arrest. In addition, you have the right to have an attorney present at any time that you are questioned by the police, whether at the time of arrest or during the police's subsequent investigation. You also have the right to remain silent, although unlike the United States, a judge could interpret your silence as a failure to cooperate with investigating authorities, which could affect the outcome of your bail application and/or could be construed as an admission of guilt under certain circumstances. Finally, you have the right to reasonable medical care while in custody. While your case is in process, a Consular Officer will periodically visit you to ensure that you are safe and healthy, and to act as a conduit for letters or other communications between you and your loved ones. The Embassy can also arrange a trust account where your friends/relatives can deposit money which the Embassy then disburses from time to time to pay for any expenses that you may incur.

The Arrest Process. Depending upon the seriousness of the offense, the police may arrest you without a warrant of arrest. At the time of arrest, the police will inform you of the grounds of arrest and your right to bail. In case of less serious offenses, the police officer himself is competent to release you on bail. The police officer will search you, place in custody all of your personal articles except your clothing and provide you with a receipt. The police may take you for a medical examination.

After your arrest, the police will record a "First Information Report" (FIR), which will cite the section of the Indian criminal law that you have allegedly violated. Once the FIR is filed by the police, the judicial process begins and continues until the case is resolved in court. After the FIR is filed, your case will be comprised of three stages: (1) investigation of the crime, (2) trial and (3) sentencing and punishment.

Within 24 hours of your arrest, you will be presented to a magistrate who will review the FIR and determine whether you can be released on bail or must be retained in police custody while the police investigate the alleged crime. Many magistrates will deny a bail request if the arrested person is a foreigner because they fear that the arrestee will flee the country. You should voice any concern you may have about your health, safety, the conduct of the police, etc. to the magistrate at this time. If the magistrate allows you to go free on bail, you still must find a local person with property who can act as your surety so that the police have a reliable person from whom to collect the bail amount in the event you flee the country. Whether in custody or released on bail, the police may retain your U.S. passport.

Investigation. The police investigation could take two or three months (or even longer) to complete, depending on the complexity of the crime.

While the police are investigating the matter, they might pressure you to confess to the crime, either orally or by signing a written statement. You should be aware that any confession made to the police can be later rebutted during the trial if you claim that the confession is not true and was extracted under pressure. However, a confession made to a magistrate or judge cannot be later retracted.

When the police investigation is complete, a "Charge Sheet" will be filed by the police. The Charge Sheet will list all of the counts under which you are being charged. You will be asked to appear before the magistrate (or in the case of certain serious charges, before a Sessions Court judge) where the charges will be formally entered (similar to an indictment in the United States). The judge may decide to drop certain charges and allow the process to go forward on others. In addition, the police may later seek to amend a Charge Sheet to add additional charges if additional criminal violations later come to light.

Trial. Once the judge has determined which charges against you will go forward, the lengthy trial process begins. Unlike trials in the United States, an Indian trial will proceed bit by bit in individual hearings over months or even years. In the United States, many cases never go to trial because the accused can enter into a "plea bargain" with the prosecutor. However, plea bargaining generally is not allowed in India, so once started, the accused must wait until the trial is completed.

Often the courtroom will seem more chaotic than in a typical American trial. Several different cases may be proceeding at the same time. For example, the judge may be paying attention to a different case while a witness provides testimony in your case, but the judge will always later review a written record of the testimony prepared by a court reporter.

You are encouraged to retain a local attorney to assist you with your case. Rates charged by Indian attorneys are extremely reasonable compared to comparable U.S. rates. Nevertheless, if you cannot afford to hire a lawyer, the Indian government will appoint a public defender to represent you.

Sentencing. If you are found not guilty you will be released. If you are found guilty, the judge will decide your sentence. Although the law may prescribe a maximum sentence for each crime, no minimum sentence is dictated by Indian law, which gives the judge considerable discretion in determining your sentence. If sentenced to serve a term in prison, you likely will be credited with any time you spent in custody during the investigation and trial of your case.